IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11993 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISHBHAI PARSOTTAMBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11993 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 11.12.2001 passed by the District

Magistrate, Vadodara in exercise of powers under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The authority observed that the activities of the petitioner are prejudicial to the maintenance of supplies of essential commodities like petrol. An offence relating to adulteration of petrol was found against the detenu. After recording satisfaction that less drastic remedy is not posssible to be resorted to and in order that the petitioner may be immediately prevented from pursuing his illegal activities, he is required to be detained under PBM, the impugned order came to be passed.

2. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India on various grounds stated in the petition. However, learned Advocate Mr. Prajapati appearing for the petitioner has restricted his argument to the fact that the detenu was in judicial custody when the impugned order was passed. He submitted that the detaining authority had before it the relevant papers, but the authority while recording the satisfaction for the need for exercise of powers under Section 3 of the Act has over-looked this aspect, which reflects non-application of mind. It is contended that the authority has not recorded as to how while in custody the detenu could have pursued his illegal activity. He submitted that there is material to indicate that the detenu was arrested and his bail application was rejected at the time when the order was passed and the authority has not even considered this aspect while passing the order. He therefore urged that the petition may be allowed.

3. Learned Assistant Government Pleader Mr. S.S.Patel who represents respondent Nos. 1, 2 and 3 has opposed to this petition. Respondent No.4 Union of India is represented by Mrs. Dawawala. Affidavits-in-reply are filed on behalf of the respondents.

4. Having regard to the contentions raised before this Court, learned AGP Mr. S.S.Patel was not in a position to controvert the factual data given by Mr. Prajapati. A perusal of the papers supplied to the detenu with the grounds of detention indicate that the detenu was arrested in connection with the offence registered against him; that he had applied for bail and that bail application was rejected on 4.12.2001. It is stated at the bar by Mr. Prajapati that subsequent to this order, bail is not granted by any Court of law and when the order of detention was passed and executed, the detenu was in judicial custody. The grounds of

detention, despite a close scrutiny, do not indicate that the authority was conscious about the detenu being in judicial custody. The affidavit in reply filed by the detaining authority speaks thus in para 19:

> "With respect to the averments made in para No. 4(o) of the petition, I say and submit that the same are not true and correct and I deny the same. I say and submit that all the relevant papers and materials relying upon which the detaining authority arrived at subjective satisfaction for passing impugned order of detention have also been supplied to the detenu alongwith the grounds of detention."

It is thus, clear that even while swearing the affidavit in this Court, the authority has not considered the contention raised in paragraph 4(o) of the petition in its right perspective. The detenu was in judicial custody when the order was passed and therefore, the order would stand vitiated on this ground alone in view of the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675, wherein it is observed that there must be cogent material before the detaining authority for passing the order of detention that the detenu is likely to be released on bail. Inference has to be drawn from available material on record. In absence of any such material, such inference cannot be drawn. The apex Court observed that likelihood of detenu moving an application for bail is not sufficient and it is different from likelihood of the detenu being released on bail. In view of the above decision, which is squarely applicable to the facts of the present case, the petition deserves to be allowed.

5. The petition is therefore, allowed. Order of detention dated 11.12.2001 passed by the District Magistrate, Vadodara is quashed and set aside. Detenu Harishbhai Parsottambhai Patel be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

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